

**COUNTY OPTION SALES AND USE TAX FOR
AGRICULTURAL LAND, OPEN LAND, AND
RECREATIONAL FACILITIES ACT**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Craig W. Buttars

LONG TITLE

General Description:

This bill modifies the Revenue and Taxation title to enact the County Option Sales and Use Tax for Agricultural Land, Open Land, and Recreational Facilities Act.

Highlighted Provisions:

This bill:

- ▶ enacts the County Option Sales and Use Tax for Agricultural Land, Open Land, and Recreational Facilities Act;
- ▶ provides definitions;
- ▶ provides procedures and requirements for the imposition, enactment, and repeal of the tax;
- ▶ provides procedures and requirements for the administration, collection, and enforcement of the tax by the State Tax Commission and provides that the State Tax Commission may collect an administrative fee for administering, collecting, and enforcing the tax;
- ▶ provides procedures and requirements for the allocation, distribution, and expenditure of tax revenues;
- ▶ requires a county legislative body to establish an advisory board to advise the county legislative body on the expenditure of tax revenues and provides procedures and requirements for establishing an advisory board;



- 28 ▶ provides that if tax revenues are not used for certain purposes within a three
29 consecutive year period, the county legislative body shall repeal the tax;
30 ▶ provides that the State Tax Commission shall adjust a county's certified tax rate to
31 include any unexpended sales and use tax revenues as ad valorem property tax
32 revenues;
33 ▶ requires the State Tax Commission to make administrative rules to provide
34 procedures for adjusting a county's certified tax rate; and
35 ▶ addresses a seller's or certified service provider's reliance on State Tax Commission
36 information or certain systems.

Monies Appropriated in this Bill:

38 None

Other Special Clauses:

40 None

Utah Code Sections Affected:

42 AMENDS:

43 **59-2-924**, as last amended by Chapter 122, Laws of Utah 2003

44 ENACTS:

45 **59-12-1601**, Utah Code Annotated 1953

46 **59-12-1602**, Utah Code Annotated 1953

47 **59-12-1603**, Utah Code Annotated 1953

48 **59-12-1604**, Utah Code Annotated 1953

49 **59-12-1605**, Utah Code Annotated 1953

50 **59-12-1606**, Utah Code Annotated 1953

51 **59-12-1607**, Utah Code Annotated 1953

52 **59-12-1608**, Utah Code Annotated 1953

54 *Be it enacted by the Legislature of the state of Utah:*

55 Section 1. Section **59-2-924** is amended to read:

56 **59-2-924. Report of valuation of property to county auditor and commission --**
57 **Transmittal by auditor to governing bodies -- Certified tax rate -- Rulemaking authority**
58 **-- Adoption of tentative budget.**

(1) (a) Before June 1 of each year, the county assessor of each county shall deliver to the county auditor and the commission the following statements:

(i) a statement containing the aggregate valuation of all taxable property in each taxing entity; and

(ii) a statement containing the taxable value of any additional personal property estimated by the county assessor to be subject to taxation in the current year.

(b) The county auditor shall, on or before June 8, transmit to the governing body of each taxing entity:

(i) the statements described in Subsections (1)(a)(i) and (ii);

(ii) an estimate of the revenue from personal property;

(iii) the certified tax rate; and

(iv) all forms necessary to submit a tax levy request.

(2) (a) (i) The "certified tax rate" means a tax rate that will provide the same ad valorem property tax revenues for a taxing entity as were budgeted by that taxing entity for the prior year.

(ii) For purposes of this Subsection (2), "ad valorem property tax revenues" do not include:

(A) collections from redemptions;

(B) interest; and

(C) penalties.

(iii) Except as provided in Subsection (2)(a)(v), the certified tax rate shall be calculated by dividing the ad valorem property tax revenues budgeted for the prior year by the taxing entity by the taxable value established in accordance with Section 59-2-913.

(iv) (A) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules determining the calculation of ad valorem property tax revenues budgeted by a taxing entity.

(B) For purposes of Subsection (2)(a)(iv)(A), ad valorem property tax revenues budgeted by a taxing entity shall be calculated in the same manner as budgeted property tax revenues are calculated for purposes of Section 59-2-913.

(v) The certified tax rates for the taxing entities described in this Subsection (2)(a)(v) shall be calculated as follows:

(A) except as provided in Subsection (2)(a)(v)(B), for new taxing entities the certified tax rate is zero;

(B) for each municipality incorporated on or after July 1, 1996, the certified tax rate is:

(I) in a county of the first, second, or third class, the levy imposed for municipal-type services under Sections 17-34-1 and 17-36-9; and

(II) in a county of the fourth, fifth, or sixth class, the levy imposed for general county purposes and such other levies imposed solely for the municipal-type services identified in Section 17-34-1 and Subsection 17-36-3(22);

(C) for debt service voted on by the public, the certified tax rate shall be the actual levy imposed by that section, except that the certified tax rates for the following levies shall be calculated in accordance with Section 59-2-913 and this section:

(I) school leeways provided for under Sections 11-2-7, 53A-16-110, 53A-17a-125, 53A-17a-127, 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103; and

(II) levies to pay for the costs of state legislative mandates or judicial or administrative orders under Section 59-2-906.3.

(vi) (A) A judgment levy imposed under Section 59-2-1328 or Section 59-2-1330 shall be established at that rate which is sufficient to generate only the revenue required to satisfy one or more eligible judgments, as defined in Section 59-2-102.

(B) The ad valorem property tax revenue generated by the judgment levy shall not be considered in establishing the taxing entity's aggregate certified tax rate.

(b) (i) For the purpose of calculating the certified tax rate, the county auditor shall use the taxable value of property on the assessment roll.

(ii) For purposes of Subsection (2)(b)(i), the taxable value of property on the assessment roll does not include new growth as defined in Subsection (2)(b)(iii).

(iii) "New growth" means:

(A) the difference between the increase in taxable value of the taxing entity from the previous calendar year to the current year; minus

(B) the amount of an increase in taxable value described in Subsection (2)(b)(iv).

(iv) Subsection (2)(b)(iii)(B) applies to the following increases in taxable value:

(A) the amount of increase to locally assessed real property taxable values resulting from factoring, reappraisal, or any other adjustments; or

(B) the amount of an increase in the taxable value of property assessed by the commission under Section 59-2-201 resulting from a change in the method of apportioning the taxable value prescribed by:

- (I) the Legislature;
- (II) a court;
- (III) the commission in an administrative rule; or
- (IV) the commission in an administrative order.

(c) Beginning January 1, 1997, if a taxing entity receives increased revenues from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of any county imposing a sales and use tax under Chapter 12, Part 11, County Option Sales and Use Tax, the taxing entity shall decrease its certified tax rate to offset the increased revenues.

(d) (i) Beginning July 1, 1997, if a county has imposed a sales and use tax under Chapter 12, Part 11, County Option Sales and Use Tax, the county's certified tax rate shall be:

(A) decreased on a one-time basis by the amount of the estimated sales and use tax revenue to be distributed to the county under Subsection 59-12-1102(3); and

(B) increased by the amount necessary to offset the county's reduction in revenue from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of the decrease in the certified tax rate under Subsection (2)(d)(i)(A).

(ii) The commission shall determine estimates of sales and use tax distributions for purposes of Subsection (2)(d)(i).

(e) Beginning January 1, 1998, if a municipality has imposed an additional resort communities sales tax under Section 59-12-402, the municipality's certified tax rate shall be decreased on a one-time basis by the amount necessary to offset the first 12 months of estimated revenue from the additional resort communities sales and use tax imposed under Section 59-12-402.

(f) For the calendar year beginning on January 1, 1999, and ending on December 31, 1999, a taxing entity's certified tax rate shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

(g) For purposes of Subsections (2)(h) through (j):

(i) "1998 actual collections" means the amount of revenues a taxing entity actually collected for the calendar year beginning on January 1, 1998, under Section 59-2-405 for:

(A) motor vehicles required to be registered with the state that weigh 12,000 pounds or less; and

(B) state-assessed commercial vehicles required to be registered with the state that weigh 12,000 pounds or less.

(ii) "1999 actual collections" means the amount of revenues a taxing entity actually collected for the calendar year beginning on January 1, 1999, under Section 59-2-405.1.

(h) For the calendar year beginning on January 1, 2000, the commission shall make the following adjustments:

(i) the commission shall make the adjustment described in Subsection (2)(i)(i) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were greater than the sum of:

(A) the taxing entity's 1999 actual collections; and

(B) any adjustments the commission made under Subsection (2)(f);

(ii) the commission shall make the adjustment described in Subsection (2)(i)(ii) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were greater than the taxing entity's 1999 actual collections, but the taxing entity's 1998 actual collections were less than the sum of:

(A) the taxing entity's 1999 actual collections; and

(B) any adjustments the commission made under Subsection (2)(f); and

(iii) the commission shall make the adjustment described in Subsection (2)(i)(iii) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were less than the taxing entity's 1999 actual collections.

(i) (i) For purposes of Subsection (2)(h)(i), the commission shall increase a taxing entity's certified tax rate under this section and a taxing entity's certified revenue levy under Section 59-2-906.1 by the amount necessary to offset the difference between:

(A) the taxing entity's 1998 actual collections; and

(B) the sum of:

(I) the taxing entity's 1999 actual collections; and

(II) any adjustments the commission made under Subsection (2)(f).

(ii) For purposes of Subsection (2)(h)(ii), the commission shall decrease a taxing entity's certified tax rate under this section and a taxing entity's certified revenue levy under Section 59-2-906.1 by the amount necessary to offset the difference between:

(A) the sum of:

(I) the taxing entity's 1999 actual collections; and

(II) any adjustments the commission made under Subsection (2)(f); and

(B) the taxing entity's 1998 actual collections.

(iii) For purposes of Subsection (2)(h)(iii), the commission shall decrease a taxing entity's certified tax rate under this section and a taxing entity's certified revenue levy under Section 59-2-906.1 by the amount of any adjustments the commission made under Subsection (2)(f).

(j) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for purposes of Subsections (2)(f) through (i), the commission may make rules establishing the method for determining a taxing entity's 1998 actual collections and 1999 actual collections.

(k) (i) (A) For fiscal year 2000, the certified tax rate of each county required under Subsection 17-34-1(4)(a) to provide advanced life support and paramedic services to the unincorporated area of the county shall be decreased by the amount necessary to reduce revenues in that fiscal year by an amount equal to the difference between the amount the county budgeted in its 2000 fiscal year budget for advanced life support and paramedic services countywide and the amount the county spent during fiscal year 2000 for those services, excluding amounts spent from a municipal services fund for those services.

(B) For fiscal year 2001, the certified tax rate of each county to which Subsection (2)(k)(i)(A) applies shall be decreased by the amount necessary to reduce revenues in that fiscal year by the amount that the county spent during fiscal year 2000 for advanced life support and paramedic services countywide, excluding amounts spent from a municipal services fund for those services.

(ii) (A) A city or town located within a county of the first class to which Subsection (2)(k)(i) applies may increase its certified tax rate by the amount necessary to generate within the city or town the same amount of revenues as the county would collect from that city or town if the decrease under Subsection (2)(k)(i) did not occur.

(B) An increase under Subsection (2)(k)(ii)(A), whether occurring in a single fiscal year or spread over multiple fiscal years, is not subject to the notice and hearing requirements of Sections 59-2-918 and 59-2-919.

(l) (i) The certified tax rate of each county required under Subsection 17-34-1(4)(b) to provide detective investigative services to the unincorporated area of the county shall be decreased:

(A) in fiscal year 2001 by the amount necessary to reduce revenues in that fiscal year by at least \$4,400,000; and

(B) in fiscal year 2002 by the amount necessary to reduce revenues in that fiscal year by an amount equal to the difference between \$9,258,412 and the amount of the reduction in revenues under Subsection (2)(l)(i)(A).

(ii) (A) (I) Beginning with municipal fiscal year 2002, a city or town located within a county to which Subsection (2)(l)(i) applies may increase its certified tax rate to generate within the city or town the same amount of revenue as the county would have collected during county fiscal year 2001 from within the city or town except for Subsection (2)(l)(i)(A).

(II) Beginning with municipal fiscal year 2003, a city or town located within a county to which Subsection (2)(l)(i) applies may increase its certified tax rate to generate within the city or town the same amount of revenue as the county would have collected during county fiscal year 2002 from within the city or town except for Subsection (2)(l)(i)(B).

(B) (I) Except as provided in Subsection (2)(l)(ii)(B)(II), an increase in the city or town's certified tax rate under Subsection (2)(l)(ii)(A), whether occurring in a single fiscal year or spread over multiple fiscal years, is subject to the notice and hearing requirements of Sections 59-2-918 and 59-2-919.

(II) For an increase under this Subsection (2)(l)(ii) that generates revenue that does not exceed the same amount of revenue as the county would have collected except for Subsection (2)(l)(i), the requirements of Sections 59-2-918 and 59-2-919 do not apply if the city or town:

(Aa) publishes a notice that meets the size, type, placement, and frequency requirements of Section 59-2-919, reflects that the increase is a shift of a tax from one imposed by the county to one imposed by the city or town, and explains how the revenues from the tax increase will be used; and

(Bb) holds a public hearing on the tax shift that may be held in conjunction with the

245 city or town's regular budget hearing.

246 (m) (i) This Subsection (2)(m) applies to each county that:

247 (A) establishes a countywide special service district under Title 17A, Chapter 2, Part
248 13, Utah Special Service District Act, to provide jail service, as provided in Subsection
249 17A-2-1304(1)(a)(x); and

250 (B) levies a property tax on behalf of the special service district under Section
251 17A-2-1322.

252 (ii) (A) The certified tax rate of each county to which this Subsection (2)(m) applies
253 shall be decreased by the amount necessary to reduce county revenues by the same amount of
254 revenues that will be generated by the property tax imposed on behalf of the special service
255 district.

256 (B) Each decrease under Subsection (2)(m)(ii)(A) shall occur contemporaneously with
257 the levy on behalf of the special service district under Section 17A-2-1322.

258 (n) (i) As used in this Subsection (2)(n):

259 (A) "Annexing county" means a county whose unincorporated area is included within a
260 fire district by annexation.

261 (B) "Annexing municipality" means a municipality whose area is included within a fire
262 district by annexation.

263 (C) "Equalized fire protection tax rate" means the tax rate that results from:

264 (I) calculating, for each participating county and each participating municipality, the
265 property tax revenue necessary to cover all of the costs associated with providing fire
266 protection, paramedic, and emergency services:

267 (Aa) for a participating county, in the unincorporated area of the county; and

268 (Bb) for a participating municipality, in the municipality; and

269 (II) adding all the amounts calculated under Subsection (2)(n)(i)(C)(I) for all
270 participating counties and all participating municipalities and then dividing that sum by the
271 aggregate taxable value of the property, as adjusted in accordance with Section 59-2-913:

272 (Aa) for participating counties, in the unincorporated area of all participating counties;
273 and

274 (Bb) for participating municipalities, in all the participating municipalities.

275 (D) "Fire district" means a county service area under Title 17A, Chapter 2, Part 4,

County Service Area Act, in the creation of which an election was not required under Subsection 17B-2-214(3)(c).

(E) "Fire protection tax rate" means:

(I) for an annexing county, the property tax rate that, when applied to taxable property in the unincorporated area of the county, generates enough property tax revenue to cover all the costs associated with providing fire protection, paramedic, and emergency services in the unincorporated area of the county; and

(II) for an annexing municipality, the property tax rate that generates enough property tax revenue in the municipality to cover all the costs associated with providing fire protection, paramedic, and emergency services in the municipality.

(F) "Participating county" means a county whose unincorporated area is included within a fire district at the time of the creation of the fire district.

(G) "Participating municipality" means a municipality whose area is included within a fire district at the time of the creation of the fire district.

(ii) In the first year following creation of a fire district, the certified tax rate of each participating county and each participating municipality shall be decreased by the amount of the equalized fire protection tax rate.

(iii) In the first year following annexation to a fire district, the certified tax rate of each annexing county and each annexing municipality shall be decreased by the fire protection tax rate.

(iv) Each tax levied under this section by a fire district shall be considered to be levied by:

(A) each participating county and each annexing county for purposes of the county's tax limitation under Section 59-2-908; and

(B) each participating municipality and each annexing municipality for purposes of the municipality's tax limitation under Section 10-5-112, for a town, or Section 10-6-133, for a city.

(o) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules to provide procedures for adjusting a county's certified tax rate as required by Section 59-12-1607.

(3) (a) On or before June 22, each taxing entity shall annually adopt a tentative budget.

(b) If the taxing entity intends to exceed the certified tax rate, it shall notify the county auditor of:

(i) its intent to exceed the certified tax rate; and

(ii) the amount by which it proposes to exceed the certified tax rate.

(c) The county auditor shall notify all property owners of any intent to exceed the certified tax rate in accordance with Subsection 59-2-919(2).

(4) (a) The taxable value for the base year under Subsection 17B-4-102(4) shall be reduced for any year to the extent necessary to provide a redevelopment agency established under Title 17B, Chapter 4, Redevelopment Agencies Act, with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:

(i) in that year there is a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i);

(ii) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and

(iii) the decrease results in a reduction of the amount to be paid to the agency under Section 17B-4-1003 or 17B-4-1004.

(b) The base taxable value under Subsection 17B-4-102(4) shall be increased in any year to the extent necessary to provide a redevelopment agency with approximately the same amount of money as the agency would have received without an increase in the certified tax rate that year if:

(i) in that year the base taxable value under Subsection 17B-4-102(4) is reduced due to a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i); and

(ii) The certified tax rate of a city, school district, or special district increases independent of the adjustment to the taxable value of the base year.

(c) Notwithstanding a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i), the amount of money allocated and, when collected, paid each year to a redevelopment agency established under Title 17B, Chapter 4, Redevelopment Agencies Act, for the payment of bonds or other contract indebtedness, but not for administrative costs, may not be less than that amount would have been without a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i).

Section 2. Section **59-12-1601** is enacted to read:

**Part 16. County Option Sales and Use Tax for Agricultural Land,
Open Land, and Recreational Facilities Act**

59-12-1601. Title.

This part is known as the "County Option Sales and Use Tax for Agricultural Land,
Open Land, and Recreational Facilities Act."

Section 3. Section **59-12-1602** is enacted to read:

59-12-1602. Definitions.

As used in this part:

(1) "Agricultural land" has the same meaning as "land in agricultural use" under
Section 59-2-502.

(2) "Annexation" means an annexation to a county under Title 17, Chapter 2,
Annexation to County.

(3) "Annexing area" means an area that is annexed into a county.

(4) "Governmental entity" means:

(a) the United States;

(b) the state;

(c) a county;

(d) a city;

(e) a town;

(f) a political subdivision of an entity described in Subsections (4)(b) through (e); or

(g) an agency, a department, a division, or other similar instrumentality of an entity
described in Subsections (4)(a) through (f).

(5) "Municipality" means a city or town.

(6) "Municipality's proportionate share" means a percentage of revenues described in
Subsection 59-12-1604(2)(b) or (3)(b) equal to the percentage that the population of a
municipality bears to the total population of the county in which the municipality is located.

(7) "Open land" means land that is:

(a) preserved predominantly in a natural, open, and undeveloped condition; and

(b) used for:

(i) wildlife habitat;

(ii) cultural or recreational use;

(iii) watershed protection; or

(iv) a use;

(A) other than a use described in Subsections (7)(b)(i) through (iii); and

(B) that is consistent with the preservation of the land in a predominantly natural, open, and undeveloped condition.

(8) "Public land" means land that is owned by a governmental entity.

(9) "Recreational facility" is as defined in Section 59-12-702.

(10) "Unexpended sales and use tax revenues" means any revenues:

(a) generated by a tax under this part; and

(b) that:

(i) on the day on which a county legislative body repeals a tax under this part as required by Section 59-12-1607, the county legislative body has not:

(A) expended for a purpose described in Subsection 59-12-1604(4)(a);

(B) expended within the unincorporated areas of the county in accordance with Subsection 59-12-1604(4)(b)(ii)(A); or

(C) distributed to a municipality in accordance with Subsection 59-12-1604(4)(b)(ii)(B); and

(ii) have not been retained by the commission in accordance with Subsection 59-12-1603(4)(b).

(11) "Unincorporated area's proportionate share" means a percentage of revenues described in Subsection 59-12-1604(2)(b) or (3)(b) equal to the percentage that the population of the unincorporated area of a county bears to the total population of the county.

Section 4. Section **59-12-1603** is enacted to read:

59-12-1603. Imposition of tax -- Base -- Rate -- Opinion question election -- Use of tax revenues -- Administration, collection, and enforcement of tax by commission -- Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.

(1) (a) Beginning on or after July 1, 2005, and subject to the other provisions of this part, a county legislative body may impose a sales and use tax of .125%:

(i) if 80% or less of the land within the county is public land;

(ii) except as provided in Subsections (1)(b) and 59-12-207.1(7)(c), on the transactions:

400 (A) described in Subsection 59-12-103(1); and

401 (B) within the county, including the cities and towns within the county;

402 (iii) for the purposes described in Section 59-12-1604; and

403 (iv) in addition to any other sales and use tax authorized under this chapter.

404 (b) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a
405 tax under this section on the sales and uses described in Section 59-12-104 to the extent the
406 sales and uses are exempt from taxation under Section 59-12-104.

407 (c) For purposes of this Subsection (1), the location of a transaction shall be
408 determined in accordance with Sections 59-12-207.1 through 59-12-207.4.

409 (2) (a) Before imposing a tax under this part, a county legislative body shall:

410 (i) obtain approval from a majority of the members of the county legislative body to
411 impose the tax; and

412 (ii) subject to Subsection (2)(b), submit an opinion question to the county's registered
413 voters voting on the imposition of the tax so that each registered voter has the opportunity to
414 express the registered voter's opinion on whether a tax should be imposed under this part.

415 (b) The election required by Subsection (2)(a)(ii) shall be held:

416 (i) (A) at a regular general election; and

417 (B) in accordance with the procedures and requirements of Title 20A, Election Code,
418 governing regular general elections; or

419 (ii) (A) at a municipal general election; and

420 (B) in accordance with the procedures and requirements of Title 20A, Election Code,
421 governing municipal general elections.

422 (3) Subject to the other provisions of this part, if a county legislative body determines
423 that a majority of the county's registered voters voting on the imposition of the tax have voted
424 in favor of the imposition of the tax in accordance with Subsection (2), the county legislative
425 body shall enact the tax:

426 (a) by a majority vote of all of the members of the county legislative body;

427 (b) by enacting an ordinance:

428 (i) imposing the tax;

429 (ii) (A) creating a fund to deposit the revenues generated by the tax; and

430 (B) providing procedures and requirements for the administration of the fund described

431 in Subsection (3)(b)(ii)(A); and

432 (iii) creating an advisory board in accordance with Section 59-12-1605 or 59-12-1606
433 to make findings and recommendations to the county legislative body; and

434 (c) in accordance with Subsection (5).

435 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), the tax authorized under this part
436 shall be administered, collected, and enforced in accordance with:

437 (A) the same procedures used to administer, collect, and enforce the tax under:

438 (I) Part 1, Tax Collection; or

439 (II) Part 2, Local Sales and Use Tax Act; and

440 (B) Chapter 1, General Taxation Policies.

441 (ii) Notwithstanding Subsection (4)(a)(i), a tax under this part is not subject to
442 Subsections 59-12-205(2) through (9).

443 (b) (i) The commission may retain an amount of tax collected under this part of not to
444 exceed the lesser of:

445 (A) 1.5%; or

446 (B) an amount equal to the cost to the commission of administering this part.

447 (ii) Any amount the commission retains under Subsection (4)(b)(i) shall be:

448 (A) placed in the Sales and Use Tax Administrative Fees Account; and

449 (B) used as provided in Subsection 59-12-206(2).

450 (5) (a) (i) Except as provided in Subsection (5)(b) or (c), if, on or after July 1, 2005, a
451 county enacts or repeals a tax under this part, the enactment or repeal shall take effect:

452 (A) on the first day of a calendar quarter; and

453 (B) after a 90-day period beginning on the date the commission receives notice meeting
454 the requirements of Subsection (5)(a)(ii) from the county.

455 (ii) The notice described in Subsection (5)(a)(i)(B) shall state:

456 (A) that the county will enact or repeal a tax under this part;

457 (B) the statutory authority for the tax described in Subsection (5)(a)(ii)(A);

458 (C) the effective date of the tax described in Subsection (5)(a)(ii)(A); and

459 (D) if the county enacts the tax described in Subsection (5)(a)(ii)(A), the rate of the tax.

460 (b) (i) Notwithstanding Subsection (5)(a)(i), for a transaction described in Subsection
461 (5)(b)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

462 (A) that begins after the effective date of the enactment of the tax; and
463 (B) if the billing period for the transaction begins before the effective date of the
464 enactment of the tax under Subsection (1).

465 (ii) Notwithstanding Subsection (5)(a)(i), for a transaction described in Subsection
466 (5)(b)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

467 (A) that began before the effective date of the repeal of the tax; and
468 (B) if the billing period for the transaction begins before the effective date of the repeal
469 of the tax imposed under Subsection (1).

470 (iii) Subsections (5)(b)(i) and (ii) apply to transactions subject to a tax under:

471 (A) Subsection 59-12-103(1)(b);
472 (B) Subsection 59-12-103(1)(c);
473 (C) Subsection 59-12-103(1)(d);
474 (D) Subsection 59-12-103(1)(e);
475 (E) Subsection 59-12-103(1)(f);
476 (F) Subsection 59-12-103(1)(g);
477 (G) Subsection 59-12-103(1)(h);
478 (H) Subsection 59-12-103(1)(i);
479 (I) Subsection 59-12-103(1)(j); or
480 (J) Subsection 59-12-103(1)(k).

481 (c) (i) Notwithstanding Subsection (5)(a)(i), if a tax due under this chapter on a
482 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
483 enactment or repeal of a tax described in Subsection (5)(a)(i) takes effect:

484 (A) on the first day of a calendar quarter; and
485 (B) beginning 60 days after the effective date of the enactment or repeal under
486 Subsection (5)(a)(i).

487 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
488 the commission may by rule define the term "catalogue sale."

489 (d) (i) Except as provided in Subsection (5)(e) or (f), if, for an annexation that occurs
490 on or after July 1, 2005, the annexation will result in the enactment or repeal of a tax under this
491 part for an annexing area, the enactment or repeal shall take effect:

492 (A) on the first day of a calendar quarter; and

493 (B) after a 90-day period beginning on the date the commission receives notice meeting
494 the requirements of Subsection (5)(d)(ii) from the county that annexes the annexing area.

495 (ii) The notice described in Subsection (5)(d)(i)(B) shall state:

496 (A) that the annexation described in Subsection (5)(d)(i)(B) will result in an enactment
497 or repeal of a tax under this part for the annexing area;

498 (B) the statutory authority for the tax described in Subsection (5)(d)(ii)(A);

499 (C) the effective date of the tax described in Subsection (5)(d)(ii)(A); and

500 (D) if the county enacts the tax described in Subsection (5)(d)(ii)(A), the rate of the
501 tax.

502 (e) (i) Notwithstanding Subsection (5)(d)(i), for a transaction described in Subsection
503 (5)(e)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

504 (A) that begins after the effective date of the enactment of the tax; and

505 (B) if the billing period for the transaction begins before the effective date of the
506 enactment of the tax under Subsection (1).

507 (ii) Notwithstanding Subsection (5)(d)(i), for a transaction described in Subsection
508 (5)(e)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

509 (A) that began before the effective date of the repeal of the tax; and

510 (B) if the billing period for the transaction begins before the effective date of the repeal
511 of the tax imposed under Subsection (1).

512 (iii) Subsections (5)(e)(i) and (ii) apply to transactions subject to a tax under:

513 (A) Subsection 59-12-103(1)(b);

514 (B) Subsection 59-12-103(1)(c);

515 (C) Subsection 59-12-103(1)(d);

516 (D) Subsection 59-12-103(1)(e);

517 (E) Subsection 59-12-103(1)(f);

518 (F) Subsection 59-12-103(1)(g);

519 (G) Subsection 59-12-103(1)(h);

520 (H) Subsection 59-12-103(1)(i);

521 (I) Subsection 59-12-103(1)(j); or

522 (J) Subsection 59-12-103(1)(k).

523 (f) (i) Notwithstanding Subsection (5)(d)(i), if a tax due under this chapter on a

catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(d)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(d)(i).

(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

Section 5. Section **59-12-1604** is enacted to read:

59-12-1604. Allocation, distribution, and expenditure of tax revenues.

(1) After the commission subtracts the amount described in Subsection 59-12-1603(4)(b), the remaining revenues generated by a tax under this part shall be:

(a) transmitted:

(i) by the commission;

(ii) to the county legislative body imposing the tax;

(iii) monthly; and

(iv) by electronic funds transfer; and

(b) allocated, distributed, and expended as provided in this section.

(2) A county legislative body of a county of the first or second class that imposes a tax under this part shall:

(a) expend 50% of the amounts distributed to the county legislative body under Subsection (1) as provided in Subsection (4)(a); and

(b) allocate or distribute 50% of the revenues distributed to the county legislative body under Subsection (1) as provided in Subsection (4)(b).

(3) A county legislative body of a county of the third, fourth, fifth, or sixth class that imposes a tax under this part shall:

(a) expend 90% of the revenues distributed to the county legislative body under Subsection (1) as provided in Subsection (4)(a); and

(b) allocate or distribute 10% of the revenues distributed to the county legislative body under Subsection (1) as provided in Subsection (4)(b).

(4) (a) Except as provided in Subsections (5) through (7), a county legislative body shall expend the revenues described in Subsection (2)(a) or (3)(a):

(i) to establish conservation easements as provided in Title 57, Chapter 18, Land Conservation Easement Act, to protect agricultural land;

(ii) for watershed protection;

(iii) for per diem and expenses for members of a county board as provided in Section 59-12-1605 or 59-12-1606; or

(iv) for a combination of the purposes described in Subsections (4)(a)(i) through (iii).

(b) (i) Except as provided in Subsections (5) through (7), the revenues described in Subsection (2)(b) or (3)(b) shall be allocated, distributed, and expended in accordance with this Subsection (4)(b).

(ii) A county legislative body imposing a tax under this part shall:

(A) allocate the unincorporated area's proportionate share of the revenues described in Subsection (2)(b) or (3)(b) to be expended by the county as provided in Subsection (4)(b)(iii) within the unincorporated areas of the county; and

(B) distribute to each municipality within the county the municipality's proportionate share of the revenues described in Subsection (2)(b) or (3)(b) to be expended by the municipality as provided in Subsection (4)(b)(iii).

(iii) The revenues described in Subsection (2)(b) or (3)(b) shall be expended as follows:

(A) the first priority for expending the revenues described in Subsection (2)(b) or (3)(b) is watershed protection;

(B) the second priority for expending the revenues described in Subsection (2)(b) or (3)(b) is:

(I) to establish conservation easements as provided in Title 57, Chapter 18, Land Conservation Easement Act, to protect open land; or

(II) for another use consistent with the preservation of open land in a predominantly natural, open, and undeveloped condition;

(C) the third priority for expending the revenues described in Subsection (2)(b) or (3)(b) is for the planning, development, or construction of recreational facilities; and

(D) the revenues described in Subsection (2)(b) or (3)(b) may be expended for a combination of the priorities described in Subsections (4)(b)(iii)(A) through (C).

(5) (a) Notwithstanding Subsection (4) and except as provided in Subsection (5)(b), a

county or municipality may not expend any revenues generated by a tax under this part to purchase a fee interest in real property to protect open land.

(b) Notwithstanding Subsection (5)(a) and subject to Subsections (5)(c) and (d), a county, city, or town, may expend revenues generated by a tax under this part to purchase a fee interest in real property to protect open land if:

(i) the parcel to be purchased is not more than ten acres in size; and

(ii) real property that is roughly equivalent in size to the real property with respect to which a fee interest is purchased is transferred to private ownership:

(A) within 30 days after the day on which the fee interest in real property is purchased;

and

(B) from the county, city, or town that purchases the fee interest in real property.

(c) Eminent domain may not be used or threatened in connection with any purchase under this Subsection (5).

(d) A parcel of real property larger than ten acres in size may not be divided into separate parcels that are smaller than ten acres each to meet the requirements of Subsection (5)(b).

(6) Notwithstanding Subsection (4), a county may not:

(a) expend any revenues generated by a tax under this part to pay:

(i) debt service on a bond or bond anticipation note; or

(ii) for a cost related to the authorization or issuance of a bond or bond anticipation note, including:

(A) an engineering fee;

(B) a legal fee;

(C) a fiscal advisor's fee;

(D) interest that accrues on a bond or bond anticipation note; or

(E) a cost similar to a cost described in Subsections (6)(a)(ii)(A) through (D); or

(b) pledge any revenues generated by a tax under this part as a source of payment for a bond or bond anticipation note.

(7) Notwithstanding Subsection (4), a county, city, or town may expend revenues generated by a tax under this part within a county, city, or town that is located outside of the county, city, or town expending the revenues if the county, city, or town receiving the revenues

617 agrees to the expenditure.

618 Section 6. Section **59-12-1605** is enacted to read:

619 **59-12-1605. Advisory boards for counties of the first or second class.**

620 (1) The county legislative body of a county of the first or second class imposing a tax
621 under this part shall, in accordance with Section 59-12-1603, enact an ordinance establishing
622 an advisory board to make findings and recommendations to the county legislative body on
623 expending the revenues described in Subsection 59-12-1604(2)(a) in accordance with
624 Subsection 59-12-1604(4)(a).

625 (2) (a) Subject to Subsection (2)(b), the advisory board required by Subsection (1) shall
626 consist of 11 members appointed by the county legislative body imposing a tax under this part
627 as follows:

628 (i) three members shall be:

629 (A) members of the:

630 (I) county legislative body; or

631 (II) county executive body;

632 (B) the county executive; or

633 (C) a combination of the persons described in Subsections (2)(a)(i)(A) and (B);

634 (ii) three members shall be:

635 (A) mayors of a municipality located within the county;

636 (B) members of a municipal legislative body of a municipality located within the

637 county; or

638 (C) a combination of the persons described in Subsections (2)(a)(ii)(A) and (B);

639 (iii) two members shall represent agricultural interests as determined by the county
640 legislative body;

641 (iv) one member shall represent real estate interests as determined by the county
642 legislative body;

643 (v) one member shall be a builder as determined by the county legislative body; and

644 (vi) one member shall represent conservation interests as determined by the county
645 legislative body.

646 (b) A county legislative body shall select the members described in Subsections
647 (2)(a)(iii) through (vi) from names submitted as follows:

(i) (A) each of the local soil conservation districts created by Title 17A, Chapter 3, Part 8, Soil Conservation Districts, that are located within the county shall submit four or more names to the county legislative body; and

(B) other agricultural organizations that are located within the county may submit one or more names to the county legislative body;

(ii) (A) the local board of real estate agents representing the county shall submit two or more names to the county legislative body; and

(B) other organizations representing real estate interests may submit one or more names to the county legislative body;

(iii) (A) the local Home Builders Association representing the county shall submit two or more names to the county legislative body; and

(B) other organizations representing home building interests may submit one or more names to the county legislative body; and

(iv) organizations representing conservation interests may submit one or more names to the county legislative body.

(3) The ordinance required by Section 59-12-1603 establishing the advisory board shall:

(a) provide for the terms of the members;

(b) provide for the method of appointing members to the advisory board;

(c) provide a procedure for filling vacancies and removing members from office;

(d) provide for the appointment of a chair of the advisory board; and

(e) contain other provisions relating to the organization and procedure of the advisory board.

(4) (a) A member of an advisory board who is not an employee of a governmental entity may not receive compensation for the member's work associated with the advisory board, but may receive per diem and reimbursement for travel expenses incurred as a member of the advisory board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) A member of an advisory board who is an employee of a governmental entity who does not receive salary, per diem, or expenses from the governmental entity for their work associated with the advisory board may receive per diem and reimbursement for travel

expenses incurred as a member of the advisory board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(c) A member of an advisory board may decline to receive per diem and expenses for their work associated with the advisory board.

Section 7. Section **59-12-1606** is enacted to read:

59-12-1606. Advisory boards for counties of the third, fourth, fifth, or sixth class.

(1) The county legislative body of a county of the third, fourth, fifth, or sixth class imposing a tax under this part shall, in accordance with Section 59-12-1603, enact an ordinance establishing an advisory board to make findings and recommendations to the county legislative body on expending the revenues described in Subsection 59-12-1604(3)(a) in accordance with Subsection 59-12-1604(4)(a).

(2) (a) Subject to Subsection (2)(b), the advisory board required by Subsection (1) shall consist of seven members appointed by the county legislative body imposing a tax under this part as follows:

(i) five members shall represent agricultural interests as determined by the county legislative body;

(ii) one member shall be a:

(A) mayor of a city or town located within the county; or

(B) member of a municipal legislative body of a municipality located within the county; and

(iii) one member shall be:

(A) a member of the:

(I) county legislative body; or

(II) county executive body; or

(B) the county executive.

(b) A county legislative body shall select the members described in Subsection (2)(a)(i) from names submitted as follows:

(i) each of the local soil conservation districts created by Title 17A, Chapter 3, Part 8, Soil Conservation Districts, that are located within the county shall submit ten or more names to the county legislative body; and

(ii) other agricultural organizations that are located within the county may submit one

or more names to the county legislative body.

(3) The ordinance required by Section 59-12-1603 establishing the advisory board shall:

(a) provide for the terms of the members;

(b) provide for the method of appointing members to the advisory board;

(c) provide a procedure for filling vacancies and removing members from office;

(d) provide for the appointment of a chair of the advisory board; and

(e) contain other provisions relating to the organization and procedure of the advisory board.

(4) (a) A member of an advisory board who is not an employee of a governmental entity may not receive compensation for the member's work associated with the advisory board, but may receive per diem and reimbursement for travel expenses incurred as a member of the advisory board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) A member of an advisory board who is an employee of a governmental entity who does not receive salary, per diem, or expenses from the governmental entity for their work associated with the advisory board may receive per diem and reimbursement for travel expenses incurred as a member of the advisory board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(c) A member of an advisory board may decline to receive per diem and expenses for their work associated with the advisory board.

Section 8. Section **59-12-1607** is enacted to read:

59-12-1607. Repeal of tax -- Treatment of unexpended sales and use tax revenues as ad valorem property tax revenues.

(1) If, at any time after the day on which a county legislative body imposes a tax under this part, the county does not expend any of the revenues generated by the tax for a purpose described in Subsection 59-12-1604(4)(a) for a three consecutive year period, the county legislative body shall:

(a) repeal the tax in accordance with Subsection 59-12-1603(5); and

(b) provide notice to the commission of the repeal:

(i) no later than 30 days after the expiration of the three consecutive year period; and

(ii) in accordance with Subsection 59-12-1603(5).

(2) For one or more calendar years after a county legislative body repeals a tax under this part as required by Subsection (1), the commission shall adjust the county's certified tax rate to include any unexpended sales and use tax revenues as ad valorem property tax revenues in accordance with Section 59-2-924.

Section 9. Section **59-12-1608** is enacted to read:

59-12-1608. Seller or certified service provider reliance on commission information or certain systems.

A seller or certified service provider is not liable for failing to collect and remit a tax at a tax rate imposed under this part if:

(1) the tax rate at which the seller or certified service provider collected the tax was derived from a database created by the commission containing:

(a) tax rates; or

(b) local taxing jurisdiction boundaries;

(2) the failure to collect and remit the tax is as a result of the seller's or certified service provider's reliance on incorrect data provided by the commission in the taxability matrix required by Section 328 of the agreement;

(3) for a model 2 seller, the failure to collect and remit the tax:

(a) is due to an error in the certified automated system used by the model 2 seller; and

(b) occurs prior to an audit of the certified automated system that reveals the error in the certified automated system; or

(4) for a model 3 seller, the failure to collect and remit the tax:

(a) is due to an error in the proprietary system used by the model 3 seller; and

(b) occurs prior to an audit of the proprietary system that reveals the error in the proprietary system.

Legislative Review Note

as of 1-24-05 10:30 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0152

**County Option Sales and Use Tax for Agricultural Land, Open Land, and
Recreational Facilities Act**

*28-Jan-05
10:17 AM*

State Impact

Passage of this bill could increase local revenues by as much as \$40,281,000 if adopted by all eligible counties.

Individual and Business Impact

There is a potential increase of 1/8th percent for sales purchased by individuals in counties which adopt the local option.

Office of the Legislative Fiscal Analyst